

JSN

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
INFORMAL BRIEF

No. 19-7483, US v. Brian Hill

1:13-cr-00435-TDS-1

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 U.S. COURT OF APPEALS
 FOURTH CIRCUIT

1. Declaration of Inmate Filing

An inmate's notice of appeal is timely if it was deposited in the institution's internal mail system, with postage prepaid, on or before the last day for filing. Timely filing may be shown by:

- a postmark or date stamp showing that the notice of appeal was timely deposited in the institution's internal mail system, with postage prepaid, or
- a declaration of the inmate, under penalty of perjury, of the date on which the notice of appeal was deposited in the institution's internal mail system with postage prepaid. To include a declaration of inmate filing as part of your informal brief, complete and sign the declaration below:

Declaration of Inmate Filing	
Date NOTICE OF APPEAL deposited in institution's mail system:	<u>Nov. 27, 2019</u>
I am an inmate confined in an institution and deposited my notice of appeal in the institution's internal mail system. First-class postage was prepaid either by me or by the institution on my behalf.	
I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).	
Signature: <u>Brian D Hill</u> <i>signed</i>	Date: <u>Nov. 27, 2019</u>
<i>[Note to inmate filers: If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(A)(iii).]</i>	

2. Jurisdiction

Name of court or agency from which review is sought:

U.S. District Court, Middle District of North Carolina

Date(s) of order or orders for which review is sought:

Doc. #198 Oct. 4, 2019 - ORDER signed by CHIEF JUDGE THOMAS D. SCHROEDER on 10/4/2019. The Defendant's pro se motion to stay the judgment pending appeal (Doc. 192) is DENIED WITHOUT PREJUDICE, and his motion for recusal (Doc. 195) IS DENIED as to BRIAN DAVID HILL (1). (Daniel, J) (Entered: 10/04/2019)

3. Issues for Review

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

Issue 1.

The District Court erred and abused discretion in denying Doc. #195 MOTION entitled "Motion to Disqualify Judge" filed by BRIAN DAVID HILL. Responses due by 10/21/2019. (Attachments: # 1 Envelope - Front and Back) (Civil Case number: 17CV1036) (Garland, Leah) (Entered: 10/01/2019). See JA 1. JA means Joint Appendix.

Supporting Facts and Argument.

This judge has been citing lies and facts that cannot be sustained. This very same judge ignored any or all evidence in Brian David Hill's favor, but allowed the lies and frauds by the counsel Assistant U.S. Attorney Anand Prakash Ramaswamy. This judge is partial, biased, and is not acting fair and impartial. The judge should have acted when Document #169 was filed, accusing Anand Prakash Ramaswamy of fraud upon the court. Thomas D. Schroeder ignored that too when unopposed. This judge ignored evidence of Brian's innocence of Supervised Release Violation under Documents #181, ignored the Notice of Appeal under document #187 and after Renorda Pryor the attorney verbally brought up his interlocutory motion, and he denied it. He denied the motion to continue even though Brian's state trial de novo was still ongoing and ordered for Brian's imprison thus interfering with Brian's state criminal case and he usurped power against the state. He seems to be doing everything the Government wants. See JA 2. JA means Joint Appendix. JA 2 is the copy of the Notice of Appeal that was challenging Judge's lies.

Issue 2. To protect the integrity and fairness and due process of the federal judicial machinery, the Court of Appeals should order and remand that the Hon. Judge Thomas Schroeder recuse himself.

Supporting Facts and Argument.

Judge Schroeder said in the transcript on **Page 82, Document #123** *"So I want Mr. Hill to understand the importance of working with the probation officer. I want the family to understand the importance of him working with his officer to make sure he is in compliance."*

So he lectures Brian about working with his Probation Officer. However that is not the same lecturing he used at the hearing dated September 12, 2019. That same judge did not take Brian's good behavior with his Probation Officer into account, didn't take his compliance with the bond conditions into account, and gave him the maximum prison sentence which means that he didn't actually take Brian's autism into account and the fact that judge Schroeder didn't even accept home detention as alternative. Yet Brian is under ankle monitoring and is in compliance. That judge was very unreasonable that he refused to let Brian prove his legal innocence to the state charge when he filed VA case law in his favor. This judge ignored any evidence against the U.S. Attorney.

Issue 3. To protect the integrity and fairness and due process of the federal judicial machinery, the Court of Appeals should order and remand that the Hon. Judge Thomas Schroeder recuse himself.

Supporting Facts and Argument.

Further evidence showed that when Kristy L. Burton had been nasty by lying and committing perjury, Judge Schroeder was okay with her lying in court and lying in the records of Petition for Warrant or Summons for Offender Under Supervision (See Document #137).

See transcript on Page 83, Document #123 *"THE COURT: All right. Please work with the probation office, members of the family. It is an unusual situation. I understand Mr. Hill's issues with autism. If you have ways that will help probation, approach them. I'm sure they will be interested in knowing that. On the other hand, they have a job to do, and please do everything you can to help the probation officer work with your son and grandson to make sure that probation can do the job that they need to do."* That lecture never occurred at the hearing dated September 12, 2019. He ignored the fact that USPO Jason McMurray said that Brian was respectful to him.

See Doc. #215 Transcript, Page 39: *"Q Okay. And when you've talked to Mr. Hill, I think you stated it, has he been respectful with you?"*

"A He has."

Brian's Probation Officer did acknowledge that Brian had been respectful to him. Judge Schroeder didn't take that into account in Brian's favor.

See Doc. #215 Transcript, Page 39:

"Q And did Mr. Hill tell you -- did you get an opportunity to speak to him about this particular violation hearing?"

"A In what regard?"

"Q Just has he talked to you about what happened or anything, that he spoke to the police officers and that nature?"

"A When he was incarcerated, he had submitted some letters. We have not spoken face to face or on the telephone regarding a violation."

"Q And other than this violation that we're here today,

Mr. Hill, to your recollection, has been in compliance with all of the conditions of his release?"

"A He's been in compliance since I have supervised him until his arrest."

Judge Schroeder also didn't take any of that into account to the disadvantage and hardship against his Probation Officer. He didn't just give Brian 9 months of imprisonment; he increased Brian's years of Supervised Release giving more paperwork and stress to the already-overwhelmed U.S. probation office in Roanoke, Virginia.

Also if Brian is legally innocent of indecent exposure, then he was compliant with his supervised release. He was honest with his Probation officer, but **Judge Schroeder never took anything positive into account but took everything negative into account against Brian. That is partiality and may be an inherit bias.** When a Probation office is lying against defendant Brian David Hill, the Judge lectures Brian and his family to be nice to his Probation Officer and respect her, but when U.S. Probation Officer Jason McMurray spoke any and at all in Brian's favor, it was ignored and not taken into consideration for sentencing. **This same Judge ignored Brian's Notice of Appeal and denied the continuance which deprives Brian of procedural due process and deprived Brian of being allowed to prove his actual innocence in state court which would have subject the Document #157 violation to being dismissed as moot, as Brian had been compliant with his conditions.** Brian is to only be considered a violator if he was proven beyond a reasonable doubt to have violated the state law. If Brian didn't violate the law by not being obscene (no obscenity means no prurient interest in sex) under Virginia state law, then the Judge had no reason to revoke, had no reason to violate his supervised release as an arrest is not proof of a violation of law, it is only proof of a charge. A charge does not warrant a conviction alone. The charge has to be proven beyond a reasonable doubt in order to sustain a conviction. It isn't just the errors and abuses of discretion by this Judge, **Judge Schroeder seems to be ignoring evidence such as all of his pleadings in opposition to Government's Documents including #157 violation charge. This judge didn't take any of his pleadings into account in calculating his sentence or in determining by a preponderance of the evidence that Brian may or may not have violated the conditions of supervision. Documents #181, #178, #179, #174, #173, #172, #165, #164, #163 was ignored and not taken into consideration as to Brian's Supervised Release Violation charge under #157. Only negative things and lies were taken into consideration. If that isn't any evidence of partiality then I don't know what is.**

Judge Schroeder also ignored the facts verbally stated by witness USPO

McMurray: See Doc. #215 Transcript, Page 41:

"Q And did that Court find that he was not a flight risk at the time?"

"A Yes."

"Q And since he's been home, I believe you said May 14, 2019, has he been in violation of that particular conditions of that release?"

"A No, ma'am."

"Q Okay. And based on that release, that was -- based on that release on May 14, 2001 [sic], have you had a chance to visit him at home?"

A Yes, monthly."

So Brian's compliance under the bond conditions which were more strict than his regular Supervised Release conditions with curfew and additional conditions, Brian was compliant with all of it. Despite the hiccup that had happened on September 21, 2018, Brian had always been honest with his Probation Officer to the best of his knowledge and belief, yet the Hon. Judge Schroeder took none of that into account in Brian's favor.

Any reasonable Judge would have taken any of those facts into consideration. Brian's compliance on bond conditions and the approximately 3 years of compliance while under the supervision of USPO Jason McMurray. The evidence regarding carbon monoxide gas. **Yes, Brian doesn't have proof of the levels, but he had proof of carbon monoxide gas in his apartment and his mother's apartment.** The Judge didn't even enter its own motion for a forensic carbon monoxide expert or medical doctor to investigate Brian's claims of carbon monoxide poisoning as in Document #181. A reasonable Judge would have considered that Brian may be legally innocent of his charge of indecent exposure at the time of the hearing. A reasonable judge would have continued the final revocation proceedings until the state appeal had been over and done with, then hold Brian accountable after the final verdict of the state court in regards to whether Brian violated the indecent exposure statute or not based upon legal innocence.

If a judge is angry at Brian and may be out to get him, to hurt him, to take out his anger and frustration on Brian, then that is the kind of stuff that would happen. (1) A judge would give Brian the maximum imprisonment and not take any evidence or witnesses in his favor into account. (2) A judge would ignore evidence and refuse to put in it's own motion asking for an expert in carbon monoxide to determine if Brian was lying or telling the truth or simply that he has proof but not enough to establish a pure fact but would be a reasonable doubt. (3) A judge would punish his Probation Officer and the Roanoke, VA U.S. Probation Office by increasing Brian's years of probation over a technical violation over a state charge; thus adding more time to an already-overwhelmed Probation Office. The same Judge would lecture Brian's family and Brian to respect and be nice to his Probation Officer, but when he has been respectful to his Probation Officer the Judge ignores it as if that fact doesn't exist when in fact it does exist on the record.

If a Judge is biased, partial, and out to get Brian and to hurt him, he would refuse home detention as a alternative to 9 months of imprisonment. If a Judge was biased, partial, and out to get Brian, then that same Judge would ignore Brian's legal innocence issue in his state charge, state case, and trial de novo. That Judge should have been happy if Brian weren't a lawbreaker, then Brian was compliant with his supervised release condition, that Judge should have granted Brian's pro se motion to dismiss his supervised release violation under Document #165. Not violating Virginia law disproves Document #157 arrest and charge, and disproves it's allegation that Brian David Hill had violated Virginia law. If Brian is actually innocent of indecent exposure, the Court should have taken judicial notice of that fact and continued the hearing until Brian's state case was disposed of on the ground of innocence and no conviction could be entered. If a conviction was entered, then Brian technically did violate the conditions but his compliance and evidence still should have been taken into consideration. The fact that Brian was given the maximum imprisonment by the U.S. Attorney's recommendation shows that his Autism wasn't taken into consideration in Brian's favor, no evidence and no witnesses were ever taken into Brian's favor.

The prejudice Brian had suffered under the Hon. Judge Thomas D. Schroeder proves that he was partial, biased, and/or should have disqualified himself out of respect to the judicial machinery. A court is not a place to get revenge on somebody, the Court is not a place to retaliate against somebody, and the Court is not a place to openly lie about somebody. A court is not a place to ignore any valid evidence admissible under the Federal Rules of Evidence.

Again see JA 2. JA means Joint Appendix. JA 2 is the copy of the Notice of Appeal that was challenging Judge's lies. The lies and falsehoods stated on record by Judge Schroeder are defamatory to Brian. It isn't professional behavior.

Issue 4. If Judge couldn't grant Brian's motion for stay under Doc. #192, he should have at least considered this an ineffective assistance of counsel issue. Why wasn't attorney Renorda Pryor filing a motion for stay??

Supporting Facts and Argument

There were good issues raised in that motion for stay of judgment. Brian's state appeal, trial de novo, was still in effect and Brian being forced to turn himself into Federal Prison (self-report) by December 6, 2019, would interfere with any appeal of a bad decision that may have happened at the reported jury trial date of December 2, 2019. The Judge should have stayed the judgment or asked Renorda Pryor to adopt his pro se motion for stay and

then the motion could have been granted if Renorda Pryor was given an opportunity to adopt Brian's pro se motion. Ineffective counsel was at issue here. That denying Brian's motion for stay of judgment caused irrefutable harm and would cause any of his court appointed state defense lawyers' to consider not continuing on with his state trial de novo because the Federal imprisonment sends a message to the state court that his actual innocence does not matter in regards to Supervised Release Violation. That isn't true. If Brian didn't violate a law, he didn't violate the conditions of his supervised release. It is clear that a stay of judgment or any relief should have been warranted. The fact that the District Court didn't consider the motion for stay, using his counsel as excuse to deny motion is an error.

4. Relief Requested

Identify the precise action you want the Court of Appeals to take:

The Court of Appeals should order the U.S. District Court to reconsider denial of the Motion for recusal (Doc. 195), and remand the case back to the District Court with instructions for the Hon. Judge Thomas D. Schroeder to recuse himself so that a fair and impartial judicial officer can make fair and balanced decisions in Brian's criminal case and in Brian's 2255 Motion case. If it was just a few errors and abuses of discretion, that can be resolved easily on appeal. However evidence being ignored, witnesses in defendant's favor being ignored or not taken into consideration while anything in Government's favor is taken into consideration against Brian is evidence of partiality and bias. Courts are not one-sided outlets. Courts should be taking evidence and witnesses into account from both sides.

The Court of Appeals should order and remand that the U.S. District Court should reconsider denial of motion for stay (Doc. #192).

5. Prior appeals (for appellants only)

A. Have you filed other cases in this court? Yes ☒ No ☐

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

Brian D. Hill
Signed

Signature

[Notarization Not Required]

Brian David Hill

[Please Print Your Name Here]

In Re: Brian Hill, #19-2077, dismissed as moot as the substance of relief that was requested had actually prevailed in favor of Appellant.

United States of America v. Brian David Hill, #15-4057, dismissed as untimely

Brian Hill v. EOUSA, #18-1160, decision affirmed

Brian Hill v. EOUSA, #17-1866, dismissed interlocutory

US v. Brian Hill, #19-4758, pending

US v. Brian Hill, #19-7483, pending

In Re: Brian Hill, #19-2338, pending

CERTIFICATE OF SERVICE

I certify that on 11/27/2019 I served the original of this Informal Brief on the Clerk, addressed as shown below, then request service of process under 28 USC § 1915(d):

Brian D. Hill
Signed

Signature

Justice For USWGO.wordpress.com

U.S.W.G.O.

Brian D. Hill - Ally of QANON

310 Forest Street, Apartment 2

Martinsville, Virginia 24112

NO STAPLES, TAPE OR BINDING PLEASE

To satisfy service of process, Appellant requests that the Clerk file the informal brief on CM/ECF system, and serve the party: United States of America through Notice of Electronic Filing which serves the document with the counsel(s) of the other party. This request is pursuant to 28 U.S. Code § 1915(d) "The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases."

Additional Proof of prejudice:

Brian was given the maximum imprisonment while another person convicted on the same charge of possession of child pornography was given the low end of the sentence, but in his case he was caught with child pornography and did not report it to law enforcement like Appellant Brian David Hill had done when an anonymous source attempted to text message that filth to Brian.

Supreme Court of the United States decided *United States v. Haymond*, 139 S. Ct. 2369 (2019). For example in that case, Haymond, the defendant was initially convicted of possession of child pornography, which is the same initial offense as Appellant. *Id.* at 2373.

As in the instant case,

Haymond was sentenced to a term of (10) years of supervised release. *Id.* at 2574. Haymond was later caught, while on supervised release, with additional child pornography and a revocation hearing was conducted before a district judge without a jury and under a preponderance of the evidence standard, not the beyond a reasonable doubt standard. *Id.* Similarly, in the instant case, Appellant appeared before a district judge in a revocation hearing based upon his alleged indecent exposure, without a jury and under a preponderance of the evidence standard. Both Haymond and Appellant were sentenced to an additional term of incarceration based upon the findings of fact of a district judge, without a jury, by a preponderance of the evidence.

Although Haymond's violation invoked the mandatory minimum provision of 18 U.S.C. §3583(k), whereas Appellant's sentence for his alleged violation fell under 18 U.S.C. §3583(e), Appellant maintains that the expanded scope of trial by jury and the burden of proof being beyond a reasonable doubt also applies to Section 3583(e) violations, such as this case, either directly through Haymond or through an expansion and/or change in existing law.

"Together with the right to vote, those who wrote our Constitution considered the right to trial by jury the heart and lungs, the mainspring and the center wheel of our liberties, without which the body must die; the watch must run down; the government must become arbitrary. Just as the right to vote sought to preserve the people's authority over their government's executive and legislative functions, the right to a jury trial sought to preserve the people's authority over its judicial functions." *Haymond*, 139 S. Ct. at 2375. The atypical nature of the offense and the time of night, when few people would be present, greatly mitigate the seriousness of the alleged misconduct. Examination into his history and characteristics indicate a reduced need for lengthy incarceration.

In the decision of *Haymond*, being caught with child pornography and he did not report such material to a law enforcement agency, was given the mandatory minimum. So he gets minimum, but Brian gets the maximum imprisonment, and all evidence is ignored, witnesses are ignored.

The prejudice is the unreasonable decisions being made against Brian and in absolute favor of the Government. Had the judge been fair and did reasonable actions, Brian never would have faced revocation if he was given an opportunity to prove his innocence in state court. If the judge were reasonable, he would have file the Court's own motion pursuant to the Federal Rules of Evidence that an expert witness of carbon monoxide gas and poisoning be appointed to make a report and testify in Court to determine the issues Brian was stating on the record. There were a lot of unreasonable actions Judge Schroeder had done against Brian. **The 9 months of incarceration despite his Autism and OCD and brittle type 1 diabetes**, the circumstances which greatly mitigate the seriousness of the alleged misconduct, the compliance time before and after his arrest

on September 21, 2018. **For a Judge to take absolutely nothing into consideration in Brian's favor is prejudiced, biased, and/or impartial.**

Issues of the impartiality is that Judge Schroeder was dragging his feet after the Notice of Appeal (Doc. #190) was timely filed the same day as the final revocation hearing on September 12, 2019. The Judge had taken weeks without entering the written judgment. It took Appellant Brian Hill filing a Writ of Mandamus under case # 19-2077 and serving a copy with the Judge through the Clerk of the Court, and shortly after he had entered the written judgment on October 7, 2019 (Doc.

#200) not stalling the case any further. Other appeals are caused issues coming from the Middle District of North Carolina. Three appeals under #19-7483, #19-4758, #19-2077 all concern the issues caused by any abuses of discretion by the Hon. Judge Thomas D. Schroeder.

The typed issues in Appellant's Notice of Appeal (Doc. #203) outline Appellant's dissatisfaction with the lies and untruths being put on court record for any of the general public to see and not correct any of the lies. The lies are regurgitated, and when a judge lies, it is defamatory in nature and is a defamation of character. Any member of the media may take these lies and write news articles about it and it would further defame Brian David Hill, which will cause everlasting consequences. Judges should not utter things that are not true and are not true to the facts and law. Judges should argue facts and whatever truths are available to the Judge upon review of the arguments, evidence, and witnesses before him/her.

Brian is tired of filing Notice of Appeals. **Brian wants a Judge that is fair, impartial, and will adhere to the case laws, and to the Constitution, the facts and the law to the best of his/her abilities.**

Brian doesn't just ask the Court of Appeals to vacate the order denying the motion for recusal, but begs the Court of Appeals in all due respect to order the Judge to recuse himself so that no further issues come up in this case of evidence being ignored, one-sided justice, and the only evidence and requests accepted are from the Government while not taking anything at all that is favorable to the other party.

A Judge is like a referee in a sports game, a fair and impartial sports game officer who makes sure that there is no foul play by either team in a sports game. Like cheating would be prohibited. If any team members did anything unprofessional against the other side, the referee would stop that from happening any further by penalties. A Court however is not a sports game, but the job of the Judge is to resolve the dispute between two parties. **An impartial judge takes evidence from both sides into account when making a decision.** The reasonableness of questioning impartiality is when a Judge is completely one-sided and accepts evidence and witnesses from one side but ignores the same from the other side in favor of only one party.

The same Judge had also filed a premeditated order, See JA 3. JA means Joint Appendix. JA 3 is the copy of the premeditated order that was originally filed under Document #180 in the case before it was modified to be replaced with another document. This Document had the same factual basis for revocation as in Document #200 in the case in the District Court. That Brian David Hill had been arrested on September 21, 2018, for the commission of a crime. That order did not have any evidential facts listed in that order that the Court was relying upon the find Brian in violation which deprives Brian of due process as he cannot challenge the facts relied upon as to why Brian should prevail on appeal on the merits. Only the transcript contains what had happened (however Appellant still maintains that there were omissions in that transcript) but the facts and evidence that the Judge relied upon to revoke Brian's supervised release was not in his Document #200, but it had the same basis for revocation as the premeditated order. This Judge was clearly out to get Brian before the final revocation hearing.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Effective 12/01/2016

No. 19-7483 Caption: US v. Brian Hill - INFORMAL BRIEF

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(s) Brian D. Hill
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Party Name Brian David Hill

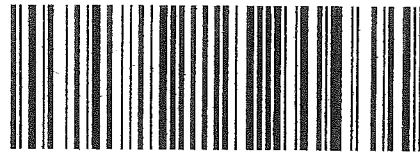
Dated: 11/27/2019

U.S.W.G.O.

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U.S.W.G.O.Brian D. Hill
Signed

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